



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/499,871	02/07/2000	John Ellis	081862.P160	1846

7590 01/12/2005
Blakely Sokoloff Taylor & Zafman LLP
12400 Wilshire Boulevard
7th floor
Los Angeles, CA 90025

EXAMINER

JUNG, MIN

ART UNIT	PAPER NUMBER
----------	--------------

2663

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

6

Office Action Summary	Application No. 09/499,871	Applicant(s) ELLIS ET AL.	
	Examiner Min Jung	Art Unit 2663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. In claims 1, 11, 21, 31, and 41, it is not clear what exactly is intended by the term "loop-back path"; is data on primary path looped back to the secondary path by the use of the switching element? (What significance does the semi-circle shown in Fig. 1 have as a loop-back path if the primary connection is switched over to the secondary connection by the switching element?)

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical

Art Unit: 2663

Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 1-50 are rejected under 35 U.S.C. 102(e) as being anticipated by Vaman et al., US 6,426,941.

Vaman discloses an ATM cell transport in which a working path and a protection path are utilized for lossless delivery of ATM cells.

Specifically, regarding claims 1, 11, 21, 31, and 41, Vaman teaches re-routing of user connections between a first node (source switch 1) and a second node (destination switch 4), using a primary connection (working path 10) and a secondary connection (protection path 20). Vaman teaches that a switching element (service controller) coupled to the loop-back path (the protection path) switches the connectivity from the primary connection (working path) to the secondary connection (protection path) when there is a failure condition at the primary connection. Vaman also teaches that the secondary connection does not use network bandwidth during a normal mode (col. 3, lines 53-55). See Fig. 2, and col. 5, lines 27-67.

Regarding claims 2, 12, 22, 32, and 42, Vaman's example shows at least a physical connection for the loop-back path (protection path including intermediate ATM switch 3) carrying switched/looped back signals. However, logical connection may also be inherent from the teaching of an ATM network.

Regarding claims 3, 13, 23, 33, and 43, Vaman teaches detecting failure condition by a network monitor (col. 5, lines 27-29).

Regarding claims 4 and 5, 14 and 15, 24 and 25, 34 and 35, 44 and 45, the re-route handler, the switching element, and their functions read on the function of the source controller "C" (col. 5, lines 45-62).

Regarding claims 6, 16, 26, 36, and 46, Vaman teaches that the protection path does not carry user connections during a normal operation (col. 3, lines 53-55, and col. 7, lines 11-14).

Regarding claims 7, 17, 27, 37, and 47, Vaman teaches ATM switches (Fig. 2).

Regarding claims 8, 18, 28, 38, and 48, virtual path connection is inherent in Vaman because Vaman's teaching is in ATM environment and ATM technology uses virtual path connection concept.

Regarding claims 9, 19, 29, 39, and 49, Vaman teaches OAM monitor (col. 5, lines 30-34).

Regarding claims 10, 20, 30, 40, and 50, it is inherent in Vaman that the primary and secondary connections have equal connection capacity because it is not stated otherwise, and also because 1:1 implies one-to-one equal connection capacity. See col. 3, lines 53-55.

Response to Arguments

6. Applicant's arguments, filed August 26, 2004, with respect to the rejection(s) of claim(s) 1-50 under Hamami and Anderson have been fully considered and are partly

Art Unit: 2663

persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Vaman et al.

The portion of argument regarding "Loop-back path" has been considered, but is not persuasive. Applicants have provided a definition of "loop-back path" and wishes to incorporate the definition provided by one source (ATIS Committee) into their invention. However, all that is called for in the present invention defined by the claim (claim 1 for example) is "a loop-back path to provide connectivity between the first and second nodes" and " a switching element coupled to the loop-back path and the first node to switch the connectivity from the primary connection to the secondary connection...".

The Vaman reference used herein teaches the loop-back path which provides connectivity between the first and second node, as did the Hamami reference used in the previous office actions. Therefore, both Vaman and Hamami's teachings meet this claim limitation. "Loop-back" is a terminology commonly used in the protection switching environment, and has a general meaning of 'switching the connection over to a different path', although the terminology is used in many different context as well. Further, it is not clear if the definition provided in the applicant's response is consistent with the meaning intended throughout the specification.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Fedyk et al. patent, the Kamo patent, and the Akiyoshi patent are cited for further references.

Art Unit: 2663

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Min Jung whose telephone number is 571-272-3127.

The examiner can normally be reached on Monday, Thursday, Friday 7:30 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on 703-272-3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJ
January 10, 2005


Min Jung
Primary Examiner